

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RICHARD IDEN,

Plaintiff,

v.

BEAN, *et al.*,

Defendants.

Case No. 2:23-cv-00303-RFB-VCF

ORDER

Plaintiff Richard Iden brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated. (ECF No. 1-1). On February 28, 2023, this Court ordered Plaintiff to file a fully complete application to proceed in forma pauperis or pay the full \$402 filing fee on or before May 1, 2023. (ECF No. 3). The Court warned Plaintiff that the action could be dismissed if he failed to file a fully complete application to proceed in forma pauperis with all three documents or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 2). That deadline expired and Plaintiff did not file a fully complete application to proceed in forma pauperis, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th

1 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to
 2 dismiss an action on one of these grounds, the Court must consider: (1) the public's
 3 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
 4 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
 5 cases on their merits; and (5) the availability of less drastic alternatives. See In re
 6 Phenylpropanolamine Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
 7 Malone v. U.S. Postal Serv., 833 F.2d 128, 130 (9th Cir. 1987)).

8 The first two factors, the public's interest in expeditiously resolving this litigation
 9 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's
 10 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
 11 because a presumption of injury arises from the occurrence of unreasonable delay in filing
 12 a pleading ordered by the court or prosecuting an action. See Anderson v. Air West, 542
 13 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
 14 cases on their merits—is greatly outweighed by the factors favoring dismissal.

15 The fifth factor requires the Court to consider whether less drastic alternatives can
 16 be used to correct the party's failure that brought about the Court's need to consider
 17 dismissal. See Yourish v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
 18 that considering less drastic alternatives before the party has disobeyed a court order
 19 does not satisfy this factor); accord Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th
 20 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
 21 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
 22 order as satisfying this element[.]” i.e., like the “initial granting of leave to amend coupled
 23 with the warning of dismissal for failure to comply[.]” have been “eroded” by Yourish).
 24 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
 25 case, but must explore possible and meaningful alternatives.” Henderson v. Duncan, 779
 26 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
 27 unless Plaintiff either files a fully complete application to proceed in forma pauperis or
 28 pays the \$402 filing fee for a civil action, the only alternative is to enter a second order

1 setting another deadline. But the reality of repeating an ignored order is that it often only
2 delays the inevitable and squanders the Court's finite resources. The circumstances here
3 do not indicate that this case will be an exception: there is no hint that Plaintiff needs
4 additional time or evidence that he did not receive the Court's order. Setting another
5 deadline is not a meaningful alternative given these circumstances. The fifth factor
6 therefore favors dismissal.

7 Having thoroughly considered these dismissal factors, the Court finds that they
8 weigh in favor of dismissal.

9 **II. CONCLUSION**

10 **IT IS THEREFORE ORDERED** that this action is dismissed without prejudice
11 based on Plaintiff's failure to file a fully complete application to proceed in forma pauperis
12 or pay the full \$402 filing fee in compliance with this Court's February 28, 2023, order.
13 The Clerk of the Court is instructed to enter judgment accordingly and close this case.

14 **IT IS FURTHER ORDERED** that Plaintiff may move to reopen this case and vacate
15 the judgment by filing a motion for reconsideration of this order. In this motion, the Plaintiff
16 is required to explain what circumstances delayed him from paying the filing fee or filing
17 the application to proceed in forma pauperis and a complaint in compliance with LSR 2-
18 1. If the Court finds there to be good cause or a reasonable explanation therein, the Court
19 will reopen the case and vacate the judgment.

20 The Clerk of the Court is instructed to send Plaintiff a copy of this order.

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22 DATED: May 15, 2023.

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25 RICHARD F. BOULWARE, II
26 UNITED STATES DISTRICT JUDGE
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